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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,479	12/21/2001	Joerg Erdmenger	DE920000107US1	5488

7590 04/05/2004

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EXAMINER

LE, DEBBIE M

ART UNIT	PAPER NUMBER
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2177

DATE MAILED: 04/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/029,479

Applicant(s)

ERDMENGER ET AL.

Examiner

DEBBIE M LE

Art Unit

2177

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 12/21/01 is in compliance with the provisions of 37 CFR 1.97 and has been considered by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cookmeyer, II et al (USP 6,363,384 B1) in view of Song et al (Optimizing Bulk Data Transfer Performance: A Packet Train Approach, ACM).

As per claims 1, 13 and 16, Cookmeyer discloses using knowledge based system for performing and analyzing network signals comprising:

establishing a knowledge base that holds algorithms and data on relations and combinations of throughput-relevant information, as knowledge base comprising a hierarchy of rule-based algorithms (col. 12, lines 48-64, col. 19, lines 48-58);

passing the gathered information to the knowledge base, the algorithm's antecedent steps to performance of its monitoring and evaluation include: establishing and storing in the memory (col. 14, lines 66-67, col. 15, line 1, col. 19, lines 48-58, col. 8, lines 54-67); and

determining using the knowledge base a set of performance parameters, as algorithms are grouped in one or more related categories of network performance criteria (col. 12, lines 50-51) **that are effective to achieve a maximum data throughput**, as the expert algorithms used in the present invention are adaptable for each given situation based on the information entered by the user at the time of application (col. 8 ,lines 59-60, col. 12, lines 58-64).

Cookmeyer does not explicitly teach gathering throughput-relevant information from system components involved in the transfer. However, Song discloses a system to optimizing bulk data transfer throughput performance by using trains of packets (page 136), which is equivalent to the present invention claimed teach **gathering throughput-relevant information from system components involved in the transfer**. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references to implement the step of gathering throughput-relevant information from system components so that the processing of protocol overhead, including interrupt handling overhead, can be minimized (page 134).

teaches the file distribution data of a single computer by a user request.

As per claim 2, Cookmeyer teaches the transfer (throughput) is part of a backup or restore operation for bulk data (col. 12, lines 20-35).

As per claims 3, 14 and 17, Cookmeyer teaches the computer systems comprises a client system (fig. 2, # 22-24, workstations) and another of the computer systems comprises a server system (fig. 2, # 25, network computer) (col. 6, lines 20-21).

As per claims 4-5, Cookmeyer teaches gathering step comprises the step of gathering information on a network used to connect the client and the server system to the server system (fig. 2, # 21, line 20).

As per claims 6-8, Cookmeyer teaches the step of evaluating the performance of the client system and its subsystems on the basis of the information gathered, a

network used to connect the client system to the server system, the server system, on the basis of the information gathered (col. 5, lines 38-64, col. 14, lines 66-67, col. 15, lines 1-35).

As per claims 9-11, Song teaches the set of performance parameters determined includes usage of data compression, a multiplex factor to be applied, a number of sessions to be used (page 137).

As per claims 12, 15 and 18, Cookmeyer teaches using a data transfer controller that is adjustable to adapt the throughput of data depending on configuration and status of the computer systems and further comprising the step of setting up the data transfer controller according to the determined set of performance parameters (col. 12, lines 60-64).

Conclusion

If a reference indicated as being mailed on PTO-FORM 892 has not been enclosed in this action, please contact Lisa Craney whose phone number is (703) 305-9601 for faster service.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBBIE M LE whose telephone number is 703-308-6409. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN BREENE can be reached on 703-305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Debbie Le

DEBBIE M LE
Examiner
Art Unit 2177

March 31, 2004.



GRETA ROBINSON
PRIMARY EXAMINER